

WILLIAM S. BOOZE v. HARRY WELLES RUSK.

MARCH 18, 1896.—Ordered to be printed.

Mr. PRINCE, from the Committee on Elections, No. 2, submitted the following

REPORT:

[To accompany House Res. No. 212.]

The Committee on Elections, No. 2, to whom was referred the contested-election case of William S. Booze *v.* Harry Welles Rusk, from the Third Congressional district of the State of Maryland, after having heard the argument of counsel for the respective parties, read their briefs, and carefully considered the evidence adduced and questions involved, submit the following report:

This district is composed of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Fifteenth, and Sixteenth wards of the city of Baltimore. At the election held therein on the 6th day of November, 1894, William S. Booze, contestant, was the Republican candidate and Harry Welles Rusk, contestee, was the Democratic candidate.

On the face of the returns the district gave a majority for contestee of 518. A certificate of election was thereupon issued to him by the governor of the State of Maryland, by virtue of which he now holds his seat in this Congress. Contestant claims that he was legally elected, and his contention is based upon the following grounds, which will be considered in proper order:

First. That he was deprived of a large number of ballots which were cast for him at the election, and a number of ballots were improperly counted for Mr. Rusk, as is shown by the recount and inspection of the original ballots cast at said election. Relative to said contention, your committee found that the voting was carried on under the provisions of the Australian ballot law, so far as the same has been made applicable to Maryland; that the ballot boxes were produced from the proper custody, appeared to be properly sealed, and the ballots preserved in the manner required by law.

That a recount of the ballots was had which resulted in a net gain to the contestant of 101 votes; that as a result of the recount by the examiner of the ballots in the rejected ballot boxes there was a net gain to the contestant of 30 votes, making in all a net gain for contestant, as result of the recount and in support of his first contention, of 131 votes.

Contestant's second contention was that a number of legal bona fide voters of said district who intended to vote for him at said election were refused the right to vote by the officers of election of said district.

Your committee find from the evidence of witnesses who testified that they were denied the right to vote at their respective precincts simply because someone had already voted on their names. Forty persons testified that had they been allowed to vote they would have voted

the Republican ticket, and on that account your committee believe that 40 votes should be added to the vote of contestant.

As to the third contention of contestant that a large number of fraudulent and illegal votes were cast at said election for the contestee, and improperly counted for him, your committee find that while the evidence is not of the highest order and of the most convincing character, yet it seems to show that 161 such votes were counted and cast for the contestee. Your committee therefore believe that 161 illegal and fraudulent votes, which were counted and cast for the contestee, should be deducted from his vote. The fourth contention of contestee is that in several precincts of said district fraud, irregularities, and intimidation were openly practiced and perpetrated by the political adherents of the contestee, Mr. Rusk, to such an extent as to render the election in said precincts void, and require the rejection of the returns from said precincts in determining the true results of said election. One of the precincts attacked was the eighth precinct of the Fourth Ward, in which it was alleged that fraudulent voting was allowed with impunity; that a Republican judge was denied access to the books between 5 and 6 o'clock; that ballots were taken from ballot clerk before names found; that at time of count Republican judge was ordered from the box, and that the polls closed three minutes too soon. Your committee find from the evidence of Thomas M. White, the Republican clerk of this precinct, that no improper voting was done; that the ballot clerk was simply hurried; that nothing was done to affect the result of the election; that the number of ballots given out by the ballot clerk tallied exactly with the list of names in the poll books; that the polls did not close three minutes too soon. Your committee did not believe that the evidence would warrant the throwing out of the returns of said precinct.

Contestant insisted that the Seventh precinct of the Second Ward should be thrown out because he claimed that a Democrat who pretended to be a Republican was appointed as a Republican clerk; that a Republican whose fingers were cut off was appointed ballot clerk; that a Republican was appointed judge who was not fully acquainted with the people of the ward, and that the ballot box appeared at the station broken open.

Your committee find from the evidence that the person who was appointed clerk testified himself that he had been a Democratic, but that he was at the time of his appointment a Republican, and had voted the straight Republican ticket ever since the election of Benjamin Harrison; that the Republican ballot clerk, whose fingers were cut off, could write his name, and that he was appointed by the Republican executive of the ward; that the Republican who was appointed judge had lived in the precinct for upward of twenty years; that the ballot box, in carrying it to the station by the handle, broke open at the lock, which was immediately wrapped and tied up, and as soon as the judge reached the station house he closed the box in the presence of the police by pasting a slip of paper over the lid, thus fastening it, and on this paper he wrote: "Lock broken carrying to station house." W. D. Myer, a Republican, testifies in substance to the above, relative to the breaking of the ballot box. The contents of the box were found intact, and the ballots counted by the examiner exactly tallied with the lists on the poll books.

Your committee did not believe that the evidence would warrant the throwing out of the returns of said precinct. Contestant insists that the Fifth precinct of the Second Ward should be thrown out because

the Republican challenger was driven or scared away from the polls and because the police census and the registration of the precinct differ. Your committee find from the evidence that there is nothing to show that the challenger was driven away or induced by sinister motives to leave the polls. Your committee also find from the evidence that there was a difference between the police census and the registration of the precinct. Under the law of Maryland the voter, in order to be registered, has to appear before the registration board, consisting of three members, two of the majority party and one of the minority party, and make oath that he has been a resident of the State for one year and of the voting district for six months and that he has attained the age of 21 years.

There was ample opportunity, under the law, to purge the registration list by applying, first, to the board of registration; should they refuse, then to the court of appeals. The court of appeals of Maryland, in the case of *Langhammer v. Munter*, says:

The fact that a man's name does not appear upon the police census of registered voters is too uncertain to be entitled to much weight.

The court declined to strike names from the registration list because they did not appear on the police census returns.

Your committee did not believe that the evidence would warrant the throwing out the returns of said precinct. Your committee also believe that in said Congressional district repeaters voted at said election, and that they voted for contestee, and have been deducted from the vote as heretofore shown.

Inasmuch as the committee are of the opinion that, after giving the most liberal interpretation to the evidence introduced by the contestant, he has failed to prove himself entitled to the seat which he claims, they recommend the adoption of the following resolutions:

*"Resolved*, That William S. Booze was not elected a Representative in the Fifty-fourth Congress from the Third district of the State of Maryland, and is not entitled to the seat as such Representative.

*"Resolved*, That Harry Welles Rusk was elected a Representative in the Fifty-fourth Congress from the Third Congressional district of the State of Maryland, and is entitled to retain his seat as such Representative."

